

By: McClendon, Isett, Flynn, Deshotel,  
Harper-Brown

H.B. No. 2295

Substitute the following for H.B. No. 2295:

By: Elkins

C.S.H.B. No. 2295

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the continuation and functions of the Texas Residential  
3 Construction Commission; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 27, Property Code, is amended by adding  
6 Section 27.0021 to read as follows:

7 Sec. 27.0021. TIME FOR CERTAIN OFFERS AND ELECTIONS BY  
8 BUILDER. In a dispute subject to Subtitle D, Title 16, if a party to  
9 the dispute is authorized to file an action described by Section  
10 426.005(a) before a recommendation is issued by a third-party  
11 inspector, before a ruling on an appeal of a third-party  
12 inspector's report, or before the expiration of the mediation  
13 period under Section 428A.004, a builder may make a written offer of  
14 settlement to the claimant under Sections 27.004(b) and (c) or an  
15 election to purchase the residence under Section 27.0042 not later  
16 than the 15th day after the earliest date on which the action may be  
17 filed under Section 426.005(g) or 428A.004(b).

18 SECTION 2. Section 27.003(a), Property Code, is amended to  
19 read as follows:

20 (a) In an action to recover damages or other relief arising  
21 from a construction defect:

22 (1) a contractor is not liable for any percentage of  
23 damages caused by:

24 (A) negligence of a person other than the

1 contractor or an agent, employee, or subcontractor of the  
2 contractor;

3 (B) failure of a person other than the contractor  
4 or an agent, employee, or subcontractor of the contractor to:

5 (i) take reasonable action to mitigate the  
6 damages; or

7 (ii) take reasonable action to maintain the  
8 residence;

9 (C) normal wear, tear, or deterioration;

10 (D) normal shrinkage due to drying or settlement  
11 of construction components within the tolerance of building  
12 standards; or

13 (E) the contractor's reliance on written  
14 information relating to the residence, appurtenance, or real  
15 property on which the residence and appurtenance are affixed that  
16 was obtained from official government records, if the written  
17 information was false or inaccurate and the contractor did not know  
18 and could not reasonably have known of the falsity or inaccuracy of  
19 the information; and

20 (2) if an assignee of the claimant or a person  
21 subrogated to the rights of a claimant fails to provide the  
22 contractor with the written notice and opportunity to inspect and  
23 offer to repair required by Section 27.004 or fails to request an  
24 ~~[state-sponsored]~~ inspection ~~[and dispute resolution]~~ under  
25 Chapter 428, if applicable, before performing repairs, the  
26 contractor is not liable for the cost of any repairs or any  
27 percentage of damages caused by repairs made to a construction

1 defect at the request of an assignee of the claimant or a person  
2 subrogated to the rights of a claimant by a person other than the  
3 contractor or an agent, employee, or subcontractor of the  
4 contractor.

5 SECTION 3. Sections 27.004(c) and (l), Property Code, are  
6 amended to read as follows:

7 (c) If compliance with Subtitle D, Title 16, or the giving  
8 of the notice under Subsections (a) and (b) within the period  
9 prescribed by those subsections is impracticable because of the  
10 necessity of initiating an action at an earlier date to prevent  
11 expiration of the statute of limitations or if the complaint is  
12 asserted as a counterclaim, compliance with Subtitle D, Title 16,  
13 or the notice is not required. However, the action or counterclaim  
14 shall specify in reasonable detail each construction defect that is  
15 the subject of the complaint. If Subtitle D, Title 16, applies to  
16 the complaint, simultaneously with the filing of an action by a  
17 claimant, the claimant must submit a request under Section 428.001.  
18 If Subtitle D, Title 16, does not apply, the inspection provided for  
19 by Subsection (a) may be made not later than the 75th day after the  
20 date of service of the suit, request for arbitration, or  
21 counterclaim on the contractor, and the offer provided for by  
22 Subsection (b) may be made not later than the 15th day after the  
23 date the ~~[state-sponsored]~~ inspection ~~[and dispute resolution]~~  
24 process under Chapter 428 is completed, if Subtitle D, Title 16,  
25 applies, or not later than the 60th day after the date of service,  
26 if Subtitle D, Title 16, does not apply. If, while an action  
27 subject to this chapter is pending, the statute of limitations for

1 the cause of action would have expired and it is determined that the  
2 provisions of Subsection (a) were not properly followed, the action  
3 shall be abated to allow compliance with Subsections (a) and (b).

4 (1) If Subtitle D, Title 16, applies to the claim and the  
5 contractor's offer of repair is accepted by the claimant, the  
6 contractor, on completion of the repairs and in accordance with  
7 Section 428.0041 [~~at the contractor's expense~~], shall engage the  
8 third-party inspector who provided the recommendation regarding  
9 the construction defect involved in the claim to inspect the  
10 repairs and determine whether the residence, as repaired, complies  
11 with the applicable limited statutory warranty and building and  
12 performance standards adopted by the commission. [~~The contractor~~  
13 ~~is entitled to a reasonable period not to exceed 15 days to address~~  
14 ~~minor cosmetic items that are necessary to fully complete the~~  
15 ~~repairs.~~] The determination of the third-party inspector of  
16 whether the repairs comply with the applicable limited statutory  
17 warranty and building and performance standards adopted by the  
18 commission establishes a rebuttable presumption on that issue. A  
19 party seeking to dispute, vacate, or overcome that presumption must  
20 establish by clear and convincing evidence that the determination  
21 is inconsistent with the applicable limited statutory warranty and  
22 building and performance standards.

23 SECTION 4. Section 41.007(a), Property Code, is amended to  
24 read as follows:

25 (a) A contract for improvements to an existing residence  
26 described by Section 41.001(b)(3) must contain:

27 (1) the contractor's license [~~certificate~~ of

1 ~~registration]~~ number from the Texas Residential Construction  
2 Commission if the contractor is required to be licensed [~~register~~]  
3 as a builder by [~~with~~] the commission;

4 (2) the address and telephone number at which the  
5 owner may file a complaint with the Texas Residential Construction  
6 Commission about the conduct of the contractor if the contractor is  
7 required to be licensed [~~register~~] as a builder by [~~with~~] the  
8 commission; and

9 (3) the following warning conspicuously printed,  
10 stamped, or typed in a size equal to at least 10-point bold type or  
11 computer equivalent:

12 "IMPORTANT NOTICE: You and your contractor are responsible  
13 for meeting the terms and conditions of this contract. If you sign  
14 this contract and you fail to meet the terms and conditions of this  
15 contract, you may lose your legal ownership rights in your  
16 home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

17 SECTION 5. Chapter 401, Property Code, is amended by adding  
18 Section 401.0011 to read as follows:

19 Sec. 401.0011. PURPOSE; TEXAS RESIDENTIAL CONSTRUCTION  
20 COMMISSION. (a) The Texas Residential Construction Commission  
21 oversees persons required to be licensed by the commission to  
22 ensure that those persons are responsible and accountable to the  
23 homeowners with whom they contract.

24 (b) The commission's mission includes:

25 (1) educating builders and homeowners about all  
26 aspects of the residential construction industry affecting the  
27 building or remodeling of homes; and

1           (2) facilitating resolution of disputes between  
2 builders and homeowners regarding construction defects through the  
3 state inspection program and through a voluntary mediation program.

4           SECTION 6. Section 401.002, Property Code, is amended by  
5 amending Subdivisions (3) and (4) and adding Subdivision (11-a) to  
6 read as follows:

7           (3) "Approved architect" means an architect licensed  
8 by this state and approved by the commission to provide services to  
9 the commission in connection with the state [~~state-sponsored~~]  
10 inspection program [~~and dispute resolution process~~].

11           (4) "Approved structural engineer" means a licensed  
12 professional engineer approved by the commission to provide  
13 services to the commission in connection with the state  
14 [~~state-sponsored~~] inspection program [~~and dispute resolution~~  
15 ~~process~~].

16           (11-a) "State inspection program" means the program  
17 administered by the commission under Subtitle D under which homes  
18 are inspected to determine whether alleged construction defects  
19 exist and inspectors issue determinations and recommendations  
20 regarding the alleged defects.

21           SECTION 7. Section 401.003(d), Property Code, is amended to  
22 read as follows:

23           (d) The term does not include a nonprofit business entity  
24 that is exempt from taxation under Section 501(c)(3), Internal  
25 Revenue Code, if:

26           (1) the construction or supervision or management of  
27 the construction of the home, material improvement, or improvement

1 sold by the nonprofit business entity is performed by a builder  
2 licensed [~~registered~~] under this title;

3 (2) the builder contractually agrees to comply with  
4 the provisions of this title;

5 (3) the builder is contractually liable to the  
6 homeowner for the warranties and building and performance standards  
7 of this title; and

8 (4) the nonprofit business entity does not participate  
9 directly in the construction of the home, material improvement, or  
10 improvement.

11 SECTION 8. Section 401.005, Property Code, is amended by  
12 amending Subsection (c) and adding Subsection (d) to read as  
13 follows:

14 (c) Except as provided by Subsection (d), a person [~~An~~  
15 ~~individual~~] who builds a home, [or] a material improvement to a  
16 home, or an improvement to the interior of an existing home when the  
17 cost of the work exceeds \$10,000 and sells the home immediately  
18 following completion of the building or remodeling and does not  
19 live in the home for at least one year following completion of the  
20 building or remodeling, is responsible as a builder under the  
21 warranty obligation created by this title for work completed by the  
22 person [~~individual~~]. Responsibility under this subsection  
23 requires a person [~~does not automatically require an individual~~] to  
24 obtain a license [~~register~~] under Section 416.001.

25 (d) Notwithstanding Subsection (c), this title does not  
26 apply to an individual who:

27 (1) improves the individual's homestead by improving

1 the interior of an existing home that is the individual's primary  
2 residence when the cost of the work exceeds \$10,000; and

3 (2) sells the home and does not live in the home for at  
4 least one year following the completion of the improvement.

5 SECTION 9. Section 401.006, Property Code, is amended to  
6 read as follows:

7 Sec. 401.006. SUNSET PROVISION. The Texas Residential  
8 Construction Commission is subject to Chapter 325, Government Code  
9 (Texas Sunset Act). Unless continued in existence as provided by  
10 that chapter, the commission is abolished and this title expires  
11 September 1, 2015 [~~2009~~].

12 SECTION 10. Sections 401.007(a), (b), and (c), Property  
13 Code, are amended to read as follows:

14 (a) The [~~If the~~] commission [~~has reasonable cause to believe~~  
15 ~~that a person is violating a statute to which this chapter applies,~~  
16 ~~the commission, in addition to any other authorized action,~~] may  
17 issue an emergency order, including an emergency order to cease and  
18 desist, to any person regardless of whether the person is a builder  
19 licensed under this title [~~from the violation or an order to take~~  
20 ~~affirmative action, or both~~], to enforce a statute to which this  
21 chapter applies if the commission determines that an emergency  
22 exists requiring immediate action to protect the public health and  
23 safety or if the commission has reasonable cause to believe that a  
24 person is violating a statute to which this chapter applies. The  
25 commission may issue the emergency order without notice and hearing  
26 or with any notice and hearing the commission considers practicable  
27 under the circumstances [~~compliance~~]. A person may appeal the

1 order directly to district court in accordance with Chapter 2001,  
2 Government Code.

3 (b) The [~~Before issuing an order under this section, the~~]  
4 commission shall set the time and place and give notice for a  
5 hearing to affirm, modify, or set aside an emergency order that was  
6 issued without a hearing [~~of a hearing before a hearings officer~~].  
7 The hearing is governed by Chapter 2001, Government Code. Based on  
8 the findings of fact, conclusions of law, and recommendations of  
9 the hearings officer, the commission by order may find whether a  
10 violation has occurred.

11 (c) The commission, after providing notice and an  
12 opportunity to appear for a hearing, may impose against a person who  
13 violates an emergency [~~a cease and desist~~] order an administrative  
14 penalty in an amount not to exceed \$1,000 for each day of violation.  
15 In addition to any other remedy provided by law, the attorney  
16 general or the commission may institute in district court a suit for  
17 injunctive relief and to collect an administrative penalty. A bond  
18 is not required of the commission with respect to injunctive relief  
19 granted under this section. In the action, the court may enter as  
20 proper an order awarding a preliminary or final injunction.

21 SECTION 11. Chapter 401, Property Code, is amended by  
22 adding Section 401.008 to read as follows:

23 Sec. 401.008. REFERENCES TO REGISTRATION. Unless the  
24 context clearly indicates otherwise, a reference in this title to a  
25 registered builder means a licensed builder. A reference in this  
26 title to a certificate of registration held by a builder under this  
27 title means a license.

1 SECTION 12. Sections 406.001(a) and (c), Property Code, are  
2 amended to read as follows:

3 (a) The Texas Residential Construction Commission consists  
4 of 11 [~~nine~~] members appointed by the governor with the advice and  
5 consent of the senate as follows:

6 (1) four members must be builders who each hold a  
7 license [~~certificate of registration~~] under Chapter 416;

8 (2) four [~~three~~] members must be representatives of  
9 the general public;

10 (3) one member must be a licensed professional  
11 engineer who practices in the area of residential construction;  
12 [~~and~~]

13 (4) one member must be [~~either~~] a licensed architect  
14 who practices in the area of residential construction; and

15 (5) one member must be [~~or~~] a building inspector who  
16 meets the requirements set forth in Chapter 427 and practices in the  
17 area of residential construction.

18 (c) A person may not be a public member of the commission if  
19 the person or the person's spouse:

20 (1) is a builder licensed by [~~registered with~~] the  
21 commission, or is otherwise registered, certified, or licensed by a  
22 regulatory agency in the field of residential construction;

23 (2) is employed by or participates in the management  
24 of a business entity or other organization regulated by or  
25 receiving money from the commission;

26 (3) owns or controls, directly or indirectly, more  
27 than a 10 percent interest in a business entity or other

1 organization regulated by or receiving money from the commission;  
2 or

3 (4) uses or receives a substantial amount of tangible  
4 goods, services, or money from the commission other than  
5 compensation or reimbursement authorized by law for commission  
6 membership, attendance, or expenses.

7 SECTION 13. Section 406.002(a), Property Code, is amended  
8 to read as follows:

9 (a) Commission members serve staggered six-year terms, with  
10 three or four members' terms expiring February 1 of each  
11 odd-numbered year. The terms of three of the builder  
12 representatives must expire in different odd-numbered years. The  
13 terms [~~term~~] of three [~~one~~] of the representatives of the general  
14 public must expire in different [~~each~~] odd-numbered years [~~year~~].

15 SECTION 14. Section 408.001, Property Code, is amended to  
16 read as follows:

17 Sec. 408.001. RULES. The commission shall adopt rules as  
18 necessary for the implementation of this title, including rules:

19 (1) governing the state [~~state-sponsored~~] inspection  
20 program [~~and dispute resolution process~~], including building and  
21 performance standards, administrative regulations, and the conduct  
22 of hearings under Subtitle D;

23 (2) establishing limited statutory warranty and  
24 building and performance standards for residential construction;

25 (3) approving third-party warranty companies; and

26 (4) approving third-party inspectors.

27 SECTION 15. Section 408.002(c), Property Code, is amended

1 to read as follows:

2 (c) The commission may charge a reasonable fee for:

3 (1) a homeowner to submit a request for  
4 [~~state-sponsored~~] inspection under Subtitle D;

5 (2) providing public information requested under  
6 Chapter 552, Government Code, excluding information requested from  
7 the commission under Section 409.001; or

8 (3) producing, mailing, and distributing special  
9 printed materials and publications generated in bulk by the  
10 commission for use and distribution by builders.

11 SECTION 16. Chapter 408, Property Code, is amended by  
12 adding Sections 408.006 and 408.007 to read as follows:

13 Sec. 408.006. USE OF TECHNOLOGY. The commission shall  
14 implement a policy requiring the commission to use appropriate  
15 technological solutions to improve the commission's ability to  
16 perform its functions. The policy must ensure that the public is  
17 able to interact with the commission on the Internet.

18 Sec. 408.007. NEGOTIATED RULEMAKING AND ALTERNATIVE  
19 DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop  
20 and implement a policy to encourage the use of:

21 (1) negotiated rulemaking procedures under Chapter  
22 2008, Government Code, for the adoption of commission rules; and

23 (2) appropriate alternative dispute resolution  
24 procedures under Chapter 2009, Government Code, to assist in the  
25 resolution of internal and external disputes under the commission's  
26 jurisdiction.

27 (b) The commission's procedures relating to alternative

1 dispute resolution must conform, to the extent possible, to any  
2 model guidelines issued by the State Office of Administrative  
3 Hearings for the use of alternative dispute resolution by state  
4 agencies.

5 (c) The commission shall designate a trained person to:

6 (1) coordinate the implementation of the policy  
7 adopted under Subsection (a);

8 (2) serve as a resource for any training needed to  
9 implement the procedures for negotiated rulemaking or alternative  
10 dispute resolution; and

11 (3) collect data concerning the effectiveness of those  
12 procedures, as implemented by the commission.

13 SECTION 17. Section 409.001(a), Property Code, is amended  
14 to read as follows:

15 (a) The commission shall prepare information of public  
16 interest describing the functions of the commission, the provisions  
17 of the limited statutory warranty and building and performance  
18 standards, the state [~~state-sponsored~~] inspection program [~~and~~  
19 ~~dispute resolution process~~], and the procedures by which complaints  
20 or requests are filed with and resolved by the commission.

21 SECTION 18. Section 409.0011(b), Property Code, is amended  
22 to read as follows:

23 (b) The commission shall create and make accessible to the  
24 public an electronic list and a hard-copy list of builders who:

25 (1) are licensed by [~~registered with~~] the commission;

26 and

27 (2) provide in this state building services, including

1 accessible floor plans, to persons with mobility-related special  
2 needs.

3 SECTION 19. Section 409.004, Property Code, is amended to  
4 read as follows:

5 Sec. 409.004. DIRECTORY OF BUILDERS AND CERTAIN INFORMATION  
6 REGARDING BUILDERS. (a) The commission shall make available to the  
7 public a list of each builder who holds a license [~~certificate of~~  
8 ~~registration~~] issued under Chapter 416.

9 (b) The commission shall post information on the  
10 commission's Internet website regarding the number of complaints  
11 the commission receives during a calendar year regarding a builder  
12 that are justified, expressed as a percentage of the total number of  
13 homes registered by the builder during the calendar year. A  
14 complaint is justified if the complaint is closed and the  
15 commission has taken disciplinary action against the builder. The  
16 commission shall update annually the information required by this  
17 subsection.

18 SECTION 20. The heading to Subtitle C, Title 16, Property  
19 Code, is amended to read as follows:

20 SUBTITLE C. BUILDER LICENSING [~~REGISTRATION~~]

21 SECTION 21. The heading to Chapter 416, Property Code, is  
22 amended to read as follows:

23 CHAPTER 416. LICENSE [~~CERTIFICATE OF REGISTRATION~~]

24 SECTION 22. Section 416.001, Property Code, is amended to  
25 read as follows:

26 Sec. 416.001. LICENSE [~~REGISTRATION~~] REQUIRED; RULES;  
27 OFFENSE. (a) Notwithstanding any other law, a [A] person may not

1 engage in business as a builder in this state or act as a builder  
2 unless the person holds a license [~~certificate of registration~~]  
3 under this chapter.

4 (b) The commission shall adopt all rules necessary to  
5 implement the licensing program under this chapter, including rules  
6 relating to:

7 (1) license eligibility, subject to the requirements  
8 of this chapter;

9 (2) renewal requirements, examination requirements,  
10 and continuing education requirements for license holders;

11 (3) security and insurance requirements;

12 (4) disciplinary actions; and

13 (5) any other issues as determined necessary by the  
14 commission.

15 (c) A person commits an offense if the person violates  
16 Subsection (a). An offense under this section is a Class B  
17 misdemeanor.

18 SECTION 23. The heading to Section 416.002, Property Code,  
19 is amended to read as follows:

20 Sec. 416.002. LICENSE APPLICATION [~~FOR CERTIFICATE~~].

21 SECTION 24. Sections 416.002(a) and (e), Property Code, are  
22 amended to read as follows:

23 (a) An applicant for an original or renewal license  
24 [~~certificate of registration~~] must submit an application on a form  
25 prescribed by the commission.

26 (e) Based on a commission investigation of an alleged  
27 violation of Sections 418.001(14)-(20) [~~418.001(a)(14)-(20)~~], the

1 commission may require an applicant for renewal of a license  
2 [~~certificate of registration~~] to disclose to the commission every  
3 person with an ownership interest in the applicant's business as a  
4 builder. This subsection does not apply to a publicly traded  
5 company.

6 SECTION 25. Section 416.004(a), Property Code, is amended  
7 to read as follows:

8 (a) The commission shall charge and collect:

9 (1) a filing fee for an application for an original  
10 license [~~certificate of registration~~] that does not exceed \$500;

11 (2) a fee for renewal of a license [~~certificate of~~  
12 ~~registration~~] that does not exceed \$300; and

13 (3) a late fee that does not exceed the amount of the  
14 fee due if payment of a license [~~registration~~] application or  
15 renewal fee due under this title is late.

16 SECTION 26. Section 416.005, Property Code, is amended to  
17 read as follows:

18 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. (a) A  
19 person may not receive an original license [~~a certificate of~~  
20 ~~registration~~] under this chapter unless:

21 (1) the person, at the time of the application:

22 (A) is at least 18 years of age; and

23 (B) is a citizen of the United States or a  
24 lawfully admitted alien; [~~and~~]

25 (2) the commission is satisfied with the person's  
26 honesty, trustworthiness, and integrity based on information  
27 supplied or discovered in connection with the person's application;

1 and

2 (3) the person complies with Subsection (b).

3 (b) To receive an original license, the person must complete  
4 an eight-hour course, one hour of which must address ethics and two  
5 hours of which must address:

6 (1) limited statutory warranties;

7 (2) building and performance standards;

8 (3) requirements of the International Residential  
9 Code as adopted under Section 430.001; and

10 (4) other statutes and rules that apply to builders  
11 under this title.

12 SECTION 27. Chapter 416, Property Code, is amended by  
13 adding Section 416.0051 to read as follows:

14 Sec. 416.0051. BOND REQUIREMENT. (a) In addition to the  
15 requirements for the issuance of an original license under Section  
16 416.005, before an original license may be issued, the person to  
17 whom the license is to be issued must file with the commission a  
18 surety bond approved by the commission that is:

19 (1) in the amount of \$25,000;

20 (2) payable to the commission; and

21 (3) for the benefit of a party who suffers damages  
22 arising from the license holder's violation of this title.

23 (b) The security required by this section must be maintained  
24 by the license holder in the required amount as a condition of  
25 licensure.

26 SECTION 28. Section 416.006, Property Code, is amended to  
27 read as follows:

1           Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR  
2 BUSINESS ENTITIES. (a) To be eligible for an original or renewal  
3 license [~~certificate of registration~~] under this chapter:

4           (1) a corporation, other than a nonprofit corporation,  
5 must designate one of its officers as its agent for the purposes of  
6 this chapter;

7           (2) a limited liability company must designate one of  
8 its managers as its agent for the purposes of this chapter; [~~and~~]

9           (3) a partnership, limited partnership, or limited  
10 liability partnership must designate one of its managing partners  
11 as its agent for the purposes of this chapter; and

12           (4) a nonprofit corporation must designate one of its  
13 officers or executive-level administrators as its agent for the  
14 purposes of this chapter.

15           (b) A corporation, limited liability company, partnership,  
16 limited partnership, or limited liability partnership is not  
17 eligible to hold a license [~~be registered~~] under this chapter and  
18 may not act as a builder unless the entity's designated agent is  
19 individually licensed [~~registered~~] as a builder.

20           SECTION 29. Chapter 416, Property Code, is amended by  
21 adding Section 416.0061 to read as follows:

22           Sec. 416.0061. EXAMINATION. (a) Except as otherwise  
23 provided by this section and effective September 1, 2011, each  
24 applicant for an original individual license under this chapter  
25 must take a licensing examination prescribed by the commission. An  
26 applicant is entitled to take the examination prescribed by the  
27 commission if:

1           (1) the commission determines that the applicant meets  
2 the qualifications required by this chapter; and

3           (2) the applicant pays the fees required by the  
4 commission.

5           (b) Each examination administered under this section must  
6 be prepared by the commission or by a multistate contractor  
7 licensing association approved by the commission. The commission  
8 shall ensure that the examination is administered in various  
9 locations throughout the state.

10          (c) The examination must be designed to determine the  
11 fitness of the applicant to engage in business as a builder in this  
12 state.

13          (d) A person who, immediately before January 1, 2010, held a  
14 certificate of registration issued by the commission or who  
15 immediately before September 1, 2011, held a license issued by the  
16 commission is eligible for a license without satisfying the  
17 examination requirement of this section if the commission  
18 determines that the person's certificate or license was active and  
19 in good standing. If the person's certificate was not active or was  
20 not in good standing as of December 31, 2009, or the person's  
21 license was not active or was not in good standing as of August 31,  
22 2011, the person is required to satisfy the examination  
23 requirement. This subsection expires December 31, 2014.

24          SECTION 30. Section 416.007, Property Code, is amended to  
25 read as follows:

26          Sec. 416.007. LICENSE ISSUANCE [~~OF CERTIFICATE~~]. (a) Not  
27 later than the 15th day after the date the commission receives an

1 application from an applicant who meets the requirements of this  
2 chapter, the commission shall issue an original or provisional  
3 license, as appropriate, [a certificate of registration] to the  
4 applicant. A builder who holds a provisional license may operate as  
5 a builder under this chapter.

6 (b) Except as provided by Section 416.0071, the license [The  
7 certificate of registration] remains in effect for the period  
8 prescribed by the commission if the license [certificate] holder  
9 complies with this chapter and pays the appropriate renewal fees.

10 (c) The commission shall issue one license [certificate of  
11 registration] for each business entity licensed [registered] under  
12 this chapter.

13 SECTION 31. Chapter 416, Property Code, is amended by  
14 adding Section 416.0071 to read as follows:

15 Sec. 416.0071. PROVISIONAL LICENSE. (a) The commission  
16 may grant a provisional license to an applicant for a license in  
17 this state who:

18 (1) has been licensed or registered in good standing  
19 to engage in business as a builder for at least two years in another  
20 jurisdiction that has licensing or registration requirements  
21 substantially equivalent to the requirements of this title;

22 (2) is currently licensed or registered in that  
23 jurisdiction; and

24 (3) has passed a national or other examination  
25 recognized by the commission.

26 (b) The commission shall issue a provisional license to a  
27 person who satisfies the requirements of Section 416.005(a) but who

1 has not completed the course required by Section 416.005(b).

2 (c) A provisional license under Subsection (a) is valid for  
3 six months from the date of issuance.

4 (d) A provisional license under Subsection (b) is valid for  
5 30 days from the date of issuance. The commission shall issue an  
6 original license to the holder of a provisional license under  
7 Subsection (b) if the person completes the required course on or  
8 before the 30th day after the date the provisional license was  
9 issued.

10 SECTION 32. The heading to Section 416.008, Property Code,  
11 is amended to read as follows:

12 Sec. 416.008. DENIAL OF LICENSE [~~REGISTRATION~~].

13 SECTION 33. Section 416.008(a), Property Code, is amended  
14 to read as follows:

15 (a) If the commission denies an application for an original  
16 license [~~certificate of registration~~] or a renewal application, the  
17 commission shall give written notice to the applicant not later  
18 than the 15th day after the date the commission receives the  
19 application.

20 SECTION 34. Section 416.009, Property Code, is amended to  
21 read as follows:

22 Sec. 416.009. LICENSE EXPIRATION [~~OF CERTIFICATE~~]. (a)  
23 The commission may issue or renew a license, other than a  
24 provisional license, [~~certificate of registration~~] for a period  
25 that does not exceed 24 months.

26 (b) The commission by rule may adopt a system under which  
27 licenses [~~certificates of registration~~] expire on several dates

1 during the year. The commission shall adjust the date for payment  
2 of renewal fees accordingly.

3 (c) In a year in which the expiration date for a license  
4 [~~certificate of registration~~] is changed, the renewal fee payable  
5 shall be prorated on a monthly basis so that the license  
6 [~~certificate~~] holder pays only that portion of the fee that is  
7 allocable to the number of months during which the license  
8 [~~certificate of registration~~] is valid. On renewal of the license  
9 [~~certificate of registration~~] on the new expiration date, the total  
10 renewal fee is payable.

11 SECTION 35. Sections 416.010(a), (b), (c), and (d),  
12 Property Code, are amended to read as follows:

13 (a) A builder shall maintain a fixed office location in this  
14 state. The address of the builder's principal place of business  
15 must be designated on the license [~~certificate of registration~~].

16 (b) Not later than the 30th day after the date a builder  
17 moves from the address designated on the license [~~certificate of~~  
18 ~~registration~~], the builder shall submit an application,  
19 accompanied by the appropriate fee, for a license [~~certificate of~~  
20 ~~registration~~] that designates the new location of the builder's  
21 principal place of business. The commission shall issue a license  
22 [~~certificate of registration~~] that designates the new location if  
23 the new location complies with the requirements of this section.

24 (c) If a builder operates under any name other than the name  
25 that is set forth on the builder's license [~~certificate of~~  
26 ~~registration~~], the builder shall, within 45 days of operating under  
27 this other name, disclose this other name to the commission.

1 (d) This section does not require a builder to obtain a  
2 license [~~certificate of registration~~] for each sales office.

3 SECTION 36. Sections 416.012(a), (c), (d), and (e),  
4 Property Code, are amended to read as follows:

5 (a) The commission shall recognize or administer continuing  
6 education programs for builders licensed [~~registered~~] by the  
7 commission. A licensed [~~registered~~] builder must participate in  
8 the programs to the extent required by this section to maintain the  
9 builder's license [~~registration~~].

10 (c) A builder who is licensed with the commission  
11 [~~registered before September 1, 2007, and all other builders who~~  
12 ~~register for the first time on or after September 1, 2007, and~~  
13 ~~satisfy the requirements of Subsection (b),~~] must complete 16  
14 [~~five~~] hours of continuing education every two [~~five~~] years, one  
15 hour of which must address ethics and may not be completed by  
16 self-directed study.

17 (d) The commission shall permit a licensed [~~registered~~]  
18 builder to receive continuing education credit for educational,  
19 technical, ethical, or professional management activities related  
20 to the practice of residential construction, including:

21 (1) successfully completing or auditing a course  
22 sponsored by an institution of higher education;

23 (2) successfully completing a course certified by a  
24 professional or trade organization;

25 (3) attending a seminar, tutorial, short course,  
26 correspondence course, videotaped course, or televised course on  
27 the practice of residential construction;

1 (4) participating in an in-house course sponsored by a  
2 corporation or other business entity;

3 (5) teaching a course described by Subdivisions  
4 (1)-(4);

5 (6) publishing an article, paper, or book on the  
6 practice of residential construction;

7 (7) making or attending a presentation at a meeting of  
8 a residential or builder association or organization or writing a  
9 paper presented at the meeting;

10 (8) participating in the activities of a residential  
11 or builder association, including serving on a committee of the  
12 organization; and

13 (9) engaging in self-directed study on the practice of  
14 residential construction.

15 (e) A licensed [~~registered~~] builder may not receive more  
16 than two continuing education credit hours during each two-year  
17 [~~five-year~~] period for engaging in self-directed study.

18 SECTION 37. Section 417.003(a), Property Code, is amended  
19 to read as follows:

20 (a) The commission shall charge and collect:

21 (1) a filing fee for an application for certification  
22 under this chapter that does not exceed \$100;

23 (2) a fee for renewal of a certification under this  
24 chapter that does not exceed \$50; and

25 (3) a late fee that does not exceed the amount of the  
26 fee due if payment of a certification [~~registration~~] or application  
27 fee due under this title is late.

1 SECTION 38. Section 418.001, Property Code, is amended to  
2 read as follows:

3 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person,  
4 including a builder or a person who is designated as a builder's  
5 agent under Section 416.006, or a person who owns or controls a  
6 majority ownership interest in the builder is subject to  
7 disciplinary action under this chapter for:

8 (1) fraud or deceit in obtaining a license,  
9 registration, or certification under this subtitle;

10 (2) misappropriation or misapplication of trust funds  
11 in the practice of residential construction, including a violation  
12 of Chapter 32, Penal Code, or Chapter 162, if found by a final  
13 nonappealable court judgment;

14 (3) naming false consideration in a contract to sell a  
15 new home or in a construction contract;

16 (4) discriminating on the basis of race, color,  
17 religion, sex, national origin, or ancestry;

18 (5) publishing a false or misleading advertisement;

19 (6) failure to honor, within a reasonable time, a  
20 check issued to the commission, or any other instrument of payment,  
21 including a credit or debit card or electronic funds transfer,  
22 after the commission has sent by certified mail a request for  
23 payment to the person's last known business address, according to  
24 commission records;

25 (7) failure to pay an administrative penalty assessed  
26 by the commission under Chapter 419 or a fee due under Chapter 426;

27 (8) failure to pay a final nonappealable court

1 judgment arising from a construction defect or other transaction  
2 between the person and a homeowner;

3 (9) failure to register a home as required by Section  
4 426.003;

5 (10) failure to remit the fee for registration of a  
6 home under Section 426.003;

7 (11) failure to reimburse a homeowner the amount  
8 ordered by the commission as provided by Section 428.004(d);

9 (12) engaging in statutory or common-law fraud or  
10 misappropriation of funds, as determined by the commission after a  
11 hearing under Section 418.003;

12 (13) a [~~repeated~~] failure to participate in the state  
13 [~~state-sponsored~~] inspection program [~~and dispute resolution~~  
14 ~~process~~] if required by this title;

15 (14) failure to obtain a license [~~register as a~~  
16 ~~builder~~] as required under Chapter 416;

17 (15) using or attempting to use a license [~~certificate~~  
18 ~~of registration~~] that has expired or that has been revoked;

19 (16) falsely representing that the person holds a  
20 license [~~certificate of registration~~] issued under Chapter 416;

21 (17) acting as a builder using a name other than the  
22 name or names disclosed to the commission;

23 (18) aiding, abetting, or conspiring with a person who  
24 does not hold a license [~~certificate of registration~~] to evade the  
25 provisions of this title or rules adopted under this title, if found  
26 by a final nonappealable court judgment;

27 (19) allowing the person's license [~~certificate of~~

1 ~~registration]~~ to be used by another person;

2 (20) acting as an agent, partner, or associate of a  
3 person who does not hold a license [~~certificate of registration~~]  
4 with the intent to evade the provisions of this title or rules  
5 adopted under this title;

6 (21) a failure to reasonably perform on an accepted  
7 offer to repair or a [~~repeated~~] failure to make an offer to repair  
8 based on:

9 (A) the recommendation of a third-party  
10 inspector under Section 428.004; or

11 (B) the final holding of an appeal under Chapter  
12 429;

13 (22) a [~~repeated~~] failure to respond to a commission  
14 request for information;

15 (23) a failure to obtain a building permit required by  
16 a political subdivision before constructing a new home or an  
17 improvement to an existing home;

18 (24) abandoning, without justification, any home  
19 improvement contract or new home construction project engaged in or  
20 undertaken by the person, if found to have done so by a final,  
21 nonappealable court judgment;

22 (25) a [~~repeated~~] failure to comply with the  
23 requirements of Subtitle F; [~~or~~]

24 (26) a failure to comply with the reporting  
25 requirements of Section 428.006;

26 (27) a failure to substantially complete all the  
27 obligations under an express contract for construction without

1 reasonable grounds for the failure, if found to have done so by a  
2 final, nonappealable court judgment;

3 (28) a failure to comply with a commission rule  
4 related to the duties and obligations of a third-party inspector  
5 under Chapter 427; or

6 (29) otherwise violating this title or a commission  
7 rule adopted under this title.

8 SECTION 39. Sections 418.002(a) and (c), Property Code, are  
9 amended to read as follows:

10 (a) On a determination that a ground for disciplinary action  
11 under Section 418.001 exists, the commission may:

12 (1) revoke or suspend a license [~~registration~~] or  
13 certification [~~in the event of repeated prior violations that have~~  
14 ~~resulted in disciplinary action~~];

15 (2) probate the suspension of a license [~~registration~~]  
16 or certification;

17 (3) formally or informally reprimand a licensed  
18 [~~registered~~] or certified person; [~~or~~]

19 (4) impose an administrative penalty under Chapter  
20 419; or

21 (5) prohibit an individual from acting as a builder  
22 under this title, from acting as a contractor, as defined by Section  
23 27.001, or from owning or operating a company that supplies goods or  
24 services to a builder or contractor for a period of time and under  
25 conditions determined by the commission.

26 (c) For purposes of Section 418.001(12), the commission may  
27 not conduct a hearing or revoke or suspend a license [~~registration~~]

1 or certification unless the determination of statutory or  
2 common-law fraud or misappropriation of funds has been made in a  
3 final nonappealable judgment by a court.

4 SECTION 40. Section 418.004(c), Property Code, is amended  
5 to read as follows:

6 (c) An appeal to a district court of a final decision of the  
7 commission under this section regarding a revocation or suspension  
8 of a license [~~registration~~] or certification is determined by  
9 substantial evidence.

10 SECTION 41. Section 419.004, Property Code, is amended to  
11 read as follows:

12 Sec. 419.004. ENFORCEMENT OF PENALTY. If a person does not  
13 pay an administrative penalty imposed under this chapter and  
14 enforcement of the penalty is not stayed, the commission may:

15 (1) refer the matter to the attorney general for  
16 collection of the penalty; or

17 (2) enforce any part of the order that specifies  
18 disciplinary action to be taken against the licensed [~~registered~~]  
19 or certified person if the licensed [~~registered~~] or certified  
20 person fails to pay the administrative penalty within the time  
21 prescribed.

22 SECTION 42. Section 420.001, Property Code, is amended to  
23 read as follows:

24 Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. In a contract  
25 for the construction of a new home or an improvement to an existing  
26 home required to be registered under Section 426.003, the contract  
27 must contain a notice to the consumer in at least 10-point bold type

1 or the computer equivalent that gives the telephone number of the  
2 commission and states:

3 STATE LAW REQUIRES THAT A PERSON HOLD A LICENSE [~~CERTIFICATE~~  
4 ~~OF REGISTRATION~~] FROM THE TEXAS RESIDENTIAL CONSTRUCTION  
5 COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE  
6 PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING  
7 HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND  
8 THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING  
9 LABOR AND MATERIALS).

10 YOU MAY CONTACT THE COMMISSION AT [insert commission's  
11 telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID  
12 LICENSE [~~CERTIFICATE OF REGISTRATION~~]. THE COMMISSION HAS  
13 INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING  
14 SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF  
15 COMPLAINTS.

16 THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE  
17 PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED  
18 IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT.  
19 IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY  
20 CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN  
21 HOW TO PROCEED UNDER THE STATE [~~STATE-SPONSORED~~] INSPECTION PROGRAM  
22 [~~AND DISPUTE RESOLUTION PROCESS~~].

23 SECTION 43. Section 420.002, Property Code, is amended to  
24 read as follows:

25 Sec. 420.002. REQUIRED CONTRACT PROVISIONS. In a contract  
26 for the construction of a new home or an improvement to an existing  
27 home required to be registered under Section 426.003, the contract

1 is not enforceable against a homeowner unless the contract:

2 (1) contains the builder's name and license  
3 [~~certificate of registration~~] number; and

4 (2) contains the notice required by Section 420.001.

5 SECTION 44. Section 420.003, Property Code, is amended to  
6 read as follows:

7 Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a)  
8 In a contract for the construction of a new home or the improvement  
9 of an existing home required to be registered under Section 426.003  
10 and that contains a provision requiring the parties to submit a  
11 dispute arising under the contract to binding arbitration, or in  
12 any agreement related to the contract that requires the parties to  
13 submit a dispute to arbitration, the provision requiring the  
14 submission of a dispute to arbitration must be prominently  
15 displayed in the document and conspicuously printed or typed in a  
16 size equal to at least 12-point [~~10-point~~] bold type or the computer  
17 equivalent.

18 (b) A written arbitration agreement to arbitrate a  
19 controversy that exists at the time of the agreement that is entered  
20 into in connection with a contract described by Subsection (a) must  
21 include a statement, initialed by each party to the agreement,  
22 stating that the party has chosen to arbitrate a controversy that  
23 exists at the time of the agreement. A written arbitration  
24 agreement to arbitrate a controversy that arises between the  
25 parties after the date of the agreement that is a provision of a  
26 contract described by Subsection (a), or an agreement entered into  
27 in connection with the contract, must include a statement,

1 initialed by each party to the agreement, stating that the party has  
2 chosen to arbitrate a controversy that arises between the parties  
3 after the date of the agreement.

4 (c) A party to a contract described by Subsection (a) may  
5 not require any other party to the contract to agree to arbitration  
6 as a condition of the contract.

7 (d) A contract provision or agreement described by this  
8 section [~~Subsection (a)~~] is not enforceable against the homeowner  
9 unless the requirements of this section [~~Subsection (a)~~] are met.

10 SECTION 45. Subtitle C, Title 16, Property Code, is amended  
11 by adding Chapter 421 to read as follows:

12 CHAPTER 421. HOMEOWNER RECOVERY FUND

13 Sec. 421.001. DEFINITIONS. In this chapter:

14 (1) "Fund" means the homeowner recovery fund.

15 (2) "Fund account" means the account established for  
16 the deposit of money held by the fund.

17 Sec. 421.002. LEGISLATIVE INTENT. The legislature intends  
18 that the fund serve as a resource of last resort for homeowners who  
19 are unable to collect damages from a builder arising from the  
20 builder's violation of this title or to get a confirmed  
21 construction defect repaired by a builder.

22 Sec. 421.003. FUND ESTABLISHED. The homeowner recovery  
23 fund is established.

24 Sec. 421.004. ACCOUNT. (a) The fund account is established  
25 with the Texas Treasury Safekeeping Trust Company in accordance  
26 with procedures adopted by the comptroller. The comptroller shall  
27 account for the deposited money separately from all other money.

1       (b) The comptroller shall annually transfer to the credit of  
2 the fund account 10 percent of each administrative penalty  
3 collected under Chapter 419.

4       (c) Notwithstanding Sections 404.071 and 404.106,  
5 Government Code, the pro rata portion of interest earned by the  
6 trust company from money in the fund shall be allocated to the fund.

7       (d) If the balance in the fund on December 31 of a year is  
8 more than \$5 million, the commission shall transfer the excess  
9 amount from the fund to the comptroller for deposit into the general  
10 revenue fund.

11       (e) The commission shall notify the comptroller of the  
12 existence of money to be credited to the fund account under this  
13 section. The commissioner must enter an order to transfer amounts  
14 from the fund account.

15       (f) The comptroller shall transfer to the credit of the fund  
16 account any money collected by the commission during state fiscal  
17 year 2010 that exceeds the commission's direct and indirect  
18 operating costs. This subsection expires September 1, 2011.

19       Sec. 421.005. CLAIM FOR PAYMENT FROM ACCOUNT. (a) A  
20 homeowner who participates in the state inspection process in  
21 connection with a request filed under Section 428.001 or engages in  
22 mediation under Section 428A.004 and sustains damages arising from  
23 a builder's violation of this title is entitled to payment from the  
24 fund if the homeowner:

25           (1) obtains a court judgment against a builder for  
26 damages arising from the violation for which execution is returned  
27 without a satisfaction of the total amount of the judgment and

1 perfects a judgment lien for the unsatisfied amount;

2 (2) in a bankruptcy proceeding involving the builder,  
3 proves a claim against the builder for damages arising from the  
4 builder's violation of this title that is disallowed or rendered  
5 uncollectible by an order or other final ruling of the bankruptcy  
6 court; or

7 (3) proves in accordance with rules adopted by the  
8 commission that:

9 (A) the homeowner sustained damages arising from  
10 the builder's violation of this title, including court costs and  
11 reasonable attorney's fees, of not more than \$10,000;

12 (B) the builder has not offered to repair or has  
13 failed to repair the construction defect or otherwise resolve the  
14 dispute arising from the construction defect; and

15 (C) the damages are uncollectible from the  
16 builder without pursuing a civil action against the builder.

17 (b) After receiving a request for payment from the fund  
18 under Subsection (a)(3), the commission shall hold a hearing to  
19 determine whether the person who makes the request is entitled to  
20 payment and, if so, the amount of the payment to which the person is  
21 entitled.

22 (c) A person entitled to payment under this section may  
23 collect only the lesser of:

24 (1) the amount of actual damages awarded or proven  
25 that the person was unable to collect from the builder; or

26 (2) \$75,000.

27 SECTION 46. The heading to Subtitle D, Title 16, Property

1 Code, is amended to read as follows:

2 SUBTITLE D. STATE [~~STATE-SPONSORED~~] INSPECTION PROGRAM [~~AND~~  
3 ~~DISPUTE RESOLUTION PROCESS~~]; STATUTORY WARRANTY AND BUILDING AND  
4 PERFORMANCE STANDARDS

5 SECTION 47. Section 426.003, Property Code, is amended by  
6 amending Subsections (a) and (b) and adding Subsection (e) to read  
7 as follows:

8 (a) A builder shall register a new home with the commission  
9 on or before the 15th day of the month following the month in which  
10 the transfer of title from the builder to the homeowner occurs.  
11 [~~The registration must include the information required by the~~  
12 ~~commission by rule and be accompanied by the fee required by~~  
13 ~~Subsection (c).~~]

14 (b) A builder who enters a transaction governed by this  
15 title, other than the transfer of title of a new home from the  
16 builder to the seller, shall register the home involved in the  
17 transaction with the commission[~~. The registration must:~~

18 [~~(1) include the information required by the~~  
19 ~~commission by rule;~~

20 [~~(2) be accompanied by the fee required by Subsection~~  
21 ~~(c); and~~

22 [~~(3) be delivered to the commission~~] not later than  
23 the 15th day after the earlier of:

24 (1) [~~(A)~~] the date of the substantial completion of  
25 the home or other residential construction project;

26 (2) [~~(B)~~] the date the new home is occupied; or

27 (3) [~~(C)~~] the date of issuance of a certificate of

1 occupancy or a certificate of completion.

2 (e) A builder who registers a home or a residential  
3 construction project under Subsection (a) or (b) shall:

4 (1) include the information required by the commission  
5 by rule;

6 (2) state whether the registration concerns a new  
7 home, a material improvement to an existing home, or an improvement  
8 to the interior of an existing home when the cost of the work  
9 exceeds \$10,000; and

10 (3) pay the fee required by Subsection (c).

11 SECTION 48. Section 426.004(a), Property Code, is amended  
12 to read as follows:

13 (a) A party who submits a request under this subtitle shall  
14 pay any amount required by the commission to offset [~~cover~~] the  
15 expense of the third-party inspector.

16 SECTION 49. Section 426.005, Property Code, is amended by  
17 amending Subsections (b) and (f) and adding Subsections (g), (h),  
18 (i), and (j) to read as follows:

19 (b) Except as provided by Subsections (g) and (h), an [~~An~~]  
20 action described by Subsection (a) must be filed:

21 (1) on or before the expiration of any applicable  
22 statute of limitations or by the 45th day after the date the  
23 third-party inspector issues the inspector's recommendation,  
24 whichever is later; or

25 (2) if the recommendation is appealed, on or before  
26 the expiration of any applicable statute of limitations or by the  
27 45th day after the date the commission issues its ruling on the

1 appeal, whichever is later.

2 (f) A homeowner is not required to comply with this subtitle  
3 if:

4 (1) at the time a homeowner and a builder enter into a  
5 contract covered by this title the builder was not licensed  
6 ~~[registered]~~; or

7 (2) the license ~~[certificate of registration]~~ of the  
8 builder has been revoked.

9 (g) Except as provided by Subsection (h), an action  
10 described by Subsection (a) may be initiated by the homeowner or  
11 builder:

12 (1) for a dispute involving workmanship and materials,  
13 on or after the 76th day after the date the request for a state  
14 inspection is submitted, except as provided by Subdivision (3);

15 (2) for a dispute involving a structural matter, on or  
16 after the 91st day after the date the request for a state inspection  
17 is submitted, except as provided by Subdivision (3); or

18 (3) if the third-party inspector's recommendation is  
19 appealed and a ruling on the appeal is not issued in the time  
20 prescribed by Section 429.001, on or after the day after the date  
21 the panel is required to issue the ruling under that section.

22 (h) If a homeowner or builder causes a delay of more than  
23 five days in the completion of the inspection process under the  
24 state inspection program or any appeal under the program, the time  
25 required under Subsection (g) to initiate an action against the  
26 homeowner or builder who causes the delay is extended by the number  
27 of days of the delay.

1        (i) An action filed under Subsection (g) must be filed on or  
2 before the later of:

3            (1) the expiration of the applicable statute of  
4 limitations; or

5            (2) the 45th day after the first date on which  
6 Subsection (g) authorizes the filing of the action.

7        (j) Once a final, unappealable recommendation or a ruling on  
8 an appeal of a recommendation is issued under this subtitle, a  
9 homeowner or builder may file an action described by Subsection  
10 (a). A homeowner is not required to delay the filing of an action to  
11 allow the builder an opportunity to make an offer of settlement or  
12 repair under Sections 27.004(b) and (c) or an election to purchase  
13 the residence under Section 27.0042. The filing of an action by the  
14 homeowner does not affect a builder's right to make an offer of  
15 settlement or repair in the time provided by Section 27.004(b) or an  
16 election to purchase the residence in the time provided by Section  
17 27.0042.

18        SECTION 50. Section 426.006, Property Code, is amended to  
19 read as follows:

20        Sec. 426.006. TIME FOR REQUESTING INSPECTION [~~AND DISPUTE~~  
21 ~~RESOLUTION~~]. (a) For an alleged defect discovered during an  
22 applicable warranty period, an [~~the state-sponsored~~] inspection  
23 through the state inspection program [~~and dispute resolution~~  
24 ~~process~~] must be requested on or before the second anniversary of  
25 the date of discovery of the conditions claimed to be evidence of  
26 the construction defect but not later than the 90th day after the  
27 date the applicable warranty period expires.

1 (b) If the alleged defect would violate the statutory  
2 warranty of habitability and was not discoverable by a reasonable,  
3 prudent inspection or examination of the home or improvement within  
4 the applicable warranty period, the [~~state-sponsored~~] inspection  
5 [~~and dispute resolution process~~] must be requested:

6 (1) on or before the second anniversary of the date of  
7 discovery of the conditions claimed to be evidence of the  
8 construction defect; and

9 (2) not later than the 10th anniversary of the date of  
10 the initial transfer of title from the builder to the initial owner  
11 of the home or improvement that is the subject of the dispute or, if  
12 there is not a closing, the date on which the contract for  
13 construction of the improvement is entered into.

14 SECTION 51. Section 426.007, Property Code, is amended to  
15 read as follows:

16 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person  
17 who submits a request for [~~state-sponsored~~] inspection under  
18 Section 428.001 [~~and dispute resolution~~] or responds to a request  
19 made under that section [~~Chapter 428~~] must disclose in the request  
20 or response the name of any expert who, before the request is  
21 submitted, inspected the home on behalf of the requestor or  
22 respondent in connection with the construction defect alleged in  
23 the request or response. If an expert's name is known to the  
24 requestor or respondent at the time of the request or response and  
25 is not disclosed as required by this section, the requestor or  
26 respondent may not designate the person as an expert or use  
27 materials prepared by that person in:

1 (1) the [~~state-sponsored~~] inspection [~~and dispute~~  
2 ~~resolution~~] process arising out of the request; or

3 (2) any action arising out of the construction defect  
4 that is the subject of the request or response.

5 SECTION 52. Sections 427.001(c), (c-1), and (d), Property  
6 Code, are amended to read as follows:

7 (c) A third-party inspector who inspects an issue involving  
8 a structural matter [~~or involving workmanship, materials, and a~~  
9 ~~structural matter~~] must:

10 (1) be an approved structural engineer or approved  
11 architect; and

12 (2) have a minimum of five years' experience in  
13 residential construction.

14 (c-1) For an inspection request with an issue [~~A third-party~~  
15 ~~inspector who inspects an issue~~] involving a structural matter and  
16 an unrelated issue involving workmanship and materials matters, the  
17 commission must assign a third-party inspector who meets [~~must~~  
18 ~~meet~~] the requirements of Subsections (b) and (c) or assign two  
19 third-party inspectors, one who meets the requirements of  
20 Subsection (b) and one who meets the requirements of Subsection  
21 (c), to work in conjunction with one another to inspect the alleged  
22 defects.

23 (d) Each third-party inspector must receive, in accordance  
24 with commission rules:

25 (1) initial training regarding the state  
26 [~~state-sponsored~~] inspection program [~~and dispute resolution~~  
27 ~~process~~] and this subtitle; and



1 (a) The commission shall adopt rules for processing requests under  
2 this chapter that include guidelines for prioritizing the handling  
3 of the requests and allocating agency staff and other resources in  
4 the most efficient manner to address the requests.

5 (b) In adopting rules under this section, the commission  
6 shall consider:

7 (1) appropriate ways to expedite inspections under the  
8 state inspection program under emergency circumstances, including  
9 cases involving issues of habitability;

10 (2) appropriate handling of complex case material and  
11 whether different handling is appropriate for requests involving a  
12 structural defect and requests involving workmanship and  
13 materials; and

14 (3) the most efficient ways to use agency staff.

15 SECTION 57. Section 428.002(a), Property Code, is amended  
16 to read as follows:

17 (a) At [~~In addition to the right of inspection provided by~~  
18 ~~Section 428.001(c), at~~] any time before the conclusion of the  
19 [~~state-sponsored~~] inspection [~~and dispute resolution~~] process  
20 under this subtitle and on the builder's written request, the  
21 builder shall be given reasonable opportunity to inspect the home  
22 that is the subject of the request or have the home inspected to  
23 determine the nature and cause of the construction defect and the  
24 nature and extent of repairs necessary to remedy the construction  
25 defect.

26 SECTION 58. Section 428.003, Property Code, is amended to  
27 read as follows:

1           Sec. 428.003. INSPECTION BY THIRD-PARTY INSPECTOR;  
2 ADMINISTRATIVE PENALTY. (a) On or before the 10th [~~30th~~] day after  
3 the date the commission receives a request, the commission shall  
4 appoint the next available third-party inspector from the  
5 applicable lists of third-party inspectors maintained by the  
6 commission under Subsection (d) [~~(c)~~]. If, in accordance with  
7 guidelines adopted under Section 428.0011, the executive director  
8 determines the circumstances involved in a request constitute an  
9 emergency, the executive director may assign a state inspector or  
10 other commission employee that the executive director determines is  
11 qualified to conduct the inspection and issue a recommendation in  
12 accordance with the requirements for inspections and  
13 recommendations by a third-party inspector.

14           (b) The commission shall establish rules and regulations  
15 that require [~~allow the homeowner and the builder to each have the~~  
16 ~~right to strike the appointment of]~~ a third-party inspector to  
17 decline an appointment and disclose to the commission that a  
18 conflict of interest exists if the third-party inspector:

19                   (1) is employed by or participates in the management  
20 of a business entity or other organization owned by or receiving  
21 money from the interested homeowner or builder;

22                   (2) owns or controls, directly or indirectly, more  
23 than a 10 percent interest in a business entity or other  
24 organization owned by or receiving money from the interested  
25 homeowner or builder; or

26                   (3) uses or receives a substantial amount of goods,  
27 services, or money from the interested homeowner or builder [~~one~~

1 ~~time for each request submitted].~~

2 (c) The commission may impose an administrative penalty on  
3 or remove from the list of available third-party inspectors a  
4 third-party inspector who knowingly fails to decline an appointment  
5 and disclose a conflict of interest in accordance with Subsection  
6 (b).

7 (d) The commission shall adopt rules that allow for the  
8 commission to maintain a list of available third-party inspectors  
9 for the various regions of the state, as required to satisfy the  
10 provisions of this title.

11 SECTION 59. Section 428.004, Property Code, is amended by  
12 amending Subsections (b) and (c) and adding Subsections (g), (h),  
13 and (i) to read as follows:

14 (b) If the dispute involves a structural matter in the home,  
15 the commission shall appoint a ~~[an approved engineer to be the]~~  
16 third-party inspector qualified under Section 427.001 to inspect  
17 for structural defects. The third-party inspector shall inspect  
18 the home not later than the 30th day after the date the request is  
19 submitted and issue a recommendation not later than the 45th ~~[60th]~~  
20 day after the date the third-party inspector receives the  
21 assignment from the commission, unless additional time is requested  
22 by the third-party inspector or a party to the dispute. The  
23 commission shall adopt rules governing the extension of time under  
24 this subsection.

25 (c) The third-party inspector's recommendation must ~~[+~~  
26 ~~[(1) address only the construction defect, based on~~  
27 ~~the applicable warranty and building and performance standards, and~~

1           ~~[(2)]~~ designate a method or manner of repair, if any.  
2 At the option of the third-party inspector, the recommendation may  
3 identify any construction defects discovered by the third-party  
4 inspector that are not included in the request for inspection that  
5 involve a violation of any applicable building and performance  
6 standard that if left unrepaired may threaten the health or safety  
7 of the occupants of the home or that involve a violation of a  
8 building code applicable to the construction. A third-party  
9 inspector has no duty to inspect the home for construction defects  
10 that are not included in the request for inspection.

11           (g) A final report made available to the public on the  
12 commission's Internet website may not include the name of the  
13 homeowner and must indicate whether the builder offered to make  
14 repairs as recommended by the final report or otherwise resolved  
15 the dispute with the homeowner.

16           (h) The commission shall remove a final report, including a  
17 request form or other case material relating to the final report,  
18 from the commission's Internet website if:

19                   (1) the builder has made repairs substantially  
20 equivalent to those required by the findings of the final report  
21 confirming the defect; and

22                   (2) the commission has confirmed with the homeowner  
23 and a third-party inspector who has inspected the repairs that the  
24 builder has made those repairs.

25           (i) A final report removed by the commission under  
26 Subsection (h) is not public information subject to disclosure  
27 under Chapter 552, Government Code.

1 SECTION 60. Chapter 428, Property Code, is amended by  
2 adding Sections 428.0041 and 428.006 to read as follows:

3 Sec. 428.0041. INSPECTION OF CONSTRUCTION DEFECT OR REPAIR;  
4 TIME FOR COMPLETION OF CERTAIN REPAIRS. (a) A builder who, for the  
5 purposes of Section 27.004(1) or otherwise, completes repairs of a  
6 construction defect shall, at the builder's expense, engage an  
7 inspector to inspect the repairs and determine whether the home, as  
8 repaired, complies with the applicable limited statutory warranty  
9 and building and performance standards adopted by the commission.  
10 The builder shall engage the third-party inspector who issued a  
11 recommendation regarding the construction defect to perform the  
12 inspection unless otherwise provided by commission rules adopted  
13 under this section.

14 (b) An inspection of repairs under Subsection (a), other  
15 than minor cosmetic repairs described by Subsection (c), must be  
16 completed not later than:

17 (1) the 30th day after the date the repairs are  
18 completed for a dispute involving workmanship and materials; and

19 (2) the 45th day after the date the repairs are  
20 completed for a dispute that involves a structural matter.

21 (c) The builder is entitled to a reasonable period not to  
22 exceed 15 days to address minor cosmetic items that are necessary to  
23 fully complete the repairs.

24 (d) The commission may for good cause require that:

25 (1) an alleged construction defect that has been  
26 inspected by a third-party inspector be inspected again by another  
27 third-party inspector or a state inspector or other commission

1 employee; or

2 (2) a builder's repair of a construction defect be  
3 inspected by a third-party inspector or a state inspector or other  
4 commission employee, regardless of whether the repair is inspected  
5 for the purposes of Subsection (a) by the third-party inspector who  
6 issued a recommendation regarding the construction defect or by a  
7 state inspector.

8 (e) The commission may charge the builder a fee for an  
9 inspection conducted under Subsection (d).

10 (f) A homeowner may refuse an inspection under this section.

11 Sec. 428.006. BUILDER REPORTING REQUIRED. (a) A builder  
12 involved in the inspection process or mediation under this subtitle  
13 shall file with the commission, on a form prescribed by the  
14 commission, information relating to any activity related to the  
15 dispute, including a settlement, repair effort, mediation,  
16 arbitration, or litigation, that occurs after:

17 (1) a third-party inspector's report issued under this  
18 chapter becomes final and nonappealable; or

19 (2) mediation is requested under Section 428A.004.

20 (b) A builder shall file a form not later than the 21st day  
21 after the report becomes final and nonappealable or the builder  
22 receives a request for mediation under Section 428A.004.

23 (c) In addition to any other information the commission  
24 determines is appropriate to request, the form prescribed under  
25 this section must request the following information:

26 (1) the name of the builder;

27 (2) the name and address of the homeowner and the

- 1 property involved in the inspection process or mediation;  
2 (3) any inspection or other request number assigned by  
3 the commission;  
4 (4) whether any repairs or other types of compensation  
5 were offered by the builder to the homeowner for any construction  
6 defects affirmed by a final, nonappealable report;  
7 (5) if repairs were offered by the builder:  
8 (A) whether any alleged defects affirmed by a  
9 final, nonappealable report were excluded from the offer of repair;  
10 and  
11 (B) whether the homeowner accepted any or all of  
12 the repairs offered;  
13 (6) if repairs were offered and accepted:  
14 (A) whether the repairs were made; and  
15 (B) whether the repairs resulted in the  
16 satisfaction of all issues between the parties as a result of the  
17 residential construction project;  
18 (7) if repairs were made, whether the builder engaged  
19 the services of the third-party inspector who performed the  
20 inspection under this subtitle to inspect the repairs;  
21 (8) if repairs were not offered or an offer for repair  
22 was not accepted, whether either of the parties pursued any further  
23 legal proceedings related to the dispute between the parties;  
24 (9) if either party has pursued further legal  
25 proceedings, whether the parties are in mediation or involved in  
26 arbitration or a civil lawsuit; and  
27 (10) if the parties are involved in an arbitration

1 proceeding, whether the arbitration is required as a provision of a  
2 contract between the parties.

3 (d) If the parties have not resolved their dispute at the  
4 time the builder files the initial form under Subsection (b), the  
5 builder must update the status of the information requested or  
6 provided on the form not later than the 21st day after the  
7 occurrence of one of the following events:

8 (1) repairs offered by the builder are accepted and  
9 performed and once performed, reinspected in accordance with  
10 Sections 27.004(1) and 428.0041 and accepted by the homeowner as  
11 resolving all issues in the dispute;

12 (2) any legal proceedings described by Subsection  
13 (c)(9) are final;

14 (3) the builder repurchases the home under Section  
15 27.0042; or

16 (4) any other resolution of the dispute between the  
17 parties is finalized.

18 (e) A builder's failure to comply with this section or to  
19 complete the required form honestly is grounds for denial of the  
20 builder's license renewal application under Chapter 416.

21 SECTION 61. Subtitle D, Title 16, Property Code, is amended  
22 by adding Chapter 428A to read as follows:

23 CHAPTER 428A. OFFICE OF OMBUDSMAN; VOLUNTARY MEDIATION

24 Sec. 428A.001. OFFICE OF OMBUDSMAN. The office of the  
25 ombudsman is established at the commission to assist the  
26 commission, builders, and homeowners following the completion of  
27 the state inspection process and to engage in other activities as

1 provided by this chapter.

2 Sec. 428A.002. QUALIFICATIONS. The commission shall hire a  
3 licensed attorney to act as ombudsman.

4 Sec. 428A.003. POWERS AND DUTIES. (a) The ombudsman shall:

5 (1) provide information and, subject to Subsection  
6 (b), advice to homeowners and builders engaged in defect repairs  
7 after the completion of the state inspection process to assist them  
8 in understanding the post-inspection process;

9 (2) assist homeowners and builders in locating  
10 mediation services, if requested, for the purposes of Section  
11 428A.004; and

12 (3) submit comments to the commission on rules and  
13 other policy changes being considered by the commission.

14 (b) The ombudsman may not provide legal advice to homeowners  
15 and builders.

16 (c) The ombudsman shall report directly to the commission.

17 Sec. 428A.004. VOLUNTARY MEDIATION. (a) The commission by  
18 rule shall establish procedures for a builder and homeowner to  
19 engage in a third-party mediation, as described by Section 154.023,  
20 Civil Practice and Remedies Code, performed by a third-party  
21 mediator not employed by the commission, of a dispute involving a  
22 construction defect as an alternative to the inspection process  
23 under this subtitle, if the homeowner, before the expiration of the  
24 time to submit a request for inspection under Section 426.006, and  
25 before a third-party inspection has been performed, submits a  
26 statement to the commission and the builder, in the form prescribed  
27 by the commission, that the homeowner is requesting mediation as an

1 alternative to the state inspection process. If a homeowner  
2 requests mediation under this section, a builder is required to  
3 participate in mediation in good faith, as determined by the  
4 mediator.

5 (b) Notwithstanding any other law, if the homeowner  
6 requests mediation under this section, an action described by  
7 Section 426.005(a):

8 (1) may not be filed before the expiration of the  
9 mediation period unless an agreement is executed as a result of the  
10 mediation that is breached before the end of the mediation period;  
11 and

12 (2) must be filed on or before the later of:

13 (A) the expiration of any applicable statute of  
14 limitations; or

15 (B) the 45th day after the earlier of:

16 (i) the expiration of the mediation period;

17 or

18 (ii) the execution of an agreement as a  
19 result of the mediation.

20 (c) For the purposes of this section, the mediation period  
21 expires on the 90th day after the date the homeowner submits a  
22 statement of intent to engage in mediation under this section. A  
23 homeowner or builder may, in accordance with Subsection (b), file  
24 an action described by Section 426.005(a) if no agreement is  
25 reached before the expiration of the mediation period.

26 (d) A builder's failure to comply with an agreement executed  
27 by the parties as a result of a mediation under this section is

1 grounds for disciplinary action under Chapter 418, including the  
2 imposition of an administrative penalty under Chapter 419.

3 (e) The parties to a mediation under this section shall  
4 split the fees of the third-party mediator equally.

5 (f) For purposes of Chapter 27, good faith participation in  
6 mediation under this section, as determined by the mediator, for  
7 the mediation period established by this section constitutes a  
8 final, nonappealable determination under this subtitle and  
9 completion of the state inspection process, and a written agreement  
10 to mediate submitted by the parties under this section constitutes  
11 a request under Section 428.001. For the purposes of Section  
12 27.004(1), if the builder makes a repair pursuant to an offer under  
13 Section 27.004(b), the builder may engage any third-party inspector  
14 to inspect the repair and determine whether the residence, as  
15 repaired, complies with the applicable limited statutory warranty  
16 and building and performance standards.

17 SECTION 62. Sections 430.001(b), (d), and (e), Property  
18 Code, are amended to read as follows:

19 (b) The warranty periods shall be:

20 (1) two years [~~one year~~] for workmanship and  
21 materials;

22 (2) four [~~two~~] years for plumbing, electrical,  
23 heating, and air-conditioning delivery systems; and

24 (3) 10 years for major structural components of the  
25 home.

26 (d) The International Residential Code for One- and  
27 Two-Family Dwellings that applies to nonelectrical aspects of

1 residential construction for the purposes of the limited statutory  
2 warranties and building and performance standards adopted under  
3 this section is:

4 (1) for residential construction located in a  
5 municipality or the extraterritorial jurisdiction of a  
6 municipality, the version of the International Residential Code  
7 applicable to nonelectrical aspects of residential construction in  
8 the municipality under Section 214.212, Local Government Code; and

9 (2) for residential construction located in an  
10 unincorporated area not in the extraterritorial jurisdiction of a  
11 municipality, the version of the International Residential Code  
12 adopted by the commission by rule [~~applicable to nonelectrical~~  
13 ~~aspects of residential construction in the municipality that is the~~  
14 ~~county seat of the county in which the construction is located; and~~

15 [~~(3) for residential construction located in an~~  
16 ~~unincorporated area in a county that does not contain an~~  
17 ~~incorporated area, the version of the International Residential~~  
18 ~~Code that existed on May 1, 2001].~~

19 (e) The National Electrical Code for One- and Two-Family  
20 Dwellings that applies to electrical aspects of residential  
21 construction for the purposes of this section is:

22 (1) for residential construction located in a  
23 municipality or the extraterritorial jurisdiction of a  
24 municipality, the version of the National Electrical Code  
25 applicable to electrical aspects of residential construction in the  
26 municipality under Section 214.214, Local Government Code; and

27 (2) for residential construction located in an

1 unincorporated area not in the extraterritorial jurisdiction of a  
2 municipality, the version of the National Electrical Code adopted  
3 by the commission by rule [~~applicable to electrical aspects of~~  
4 ~~residential construction in the municipality that is the county~~  
5 ~~seat of the county in which the construction is located, and~~  
6 [~~(3) for residential construction located in an~~  
7 ~~unincorporated area in a county that does not contain an~~  
8 ~~incorporated area, the version of the National Electrical Code that~~  
9 ~~existed on May 1, 2001]~~.

10 SECTION 63. Sections 430.005(b) and (c), Property Code, are  
11 amended to read as follows:

12 (b) This section does not exempt a builder in an area  
13 described by Subsection (a) from the builder licensing and home  
14 registration requirements imposed by this title, including the  
15 requirements of Sections 416.001 and 426.003.

16 (c) An allegation of a postconstruction defect in a  
17 construction project in an area described by Subsection (a) is  
18 subject to the state [~~state-sponsored~~] inspection program [~~and~~  
19 ~~dispute resolution process~~] described by this subtitle.

20 SECTION 64. Chapter 430, Property Code, is amended by  
21 adding Sections 430.012 and 430.013 to read as follows:

22 Sec. 430.012. HOMEOWNER INFORMATION PAMPHLET. (a) The  
23 commission shall produce a homeowner information pamphlet to  
24 provide homeowners with basic information about the commission and  
25 the state inspection program.

26 (b) The pamphlet must include information describing:

27 (1) the commission's jurisdiction;

- 1           (2) the state inspection program;  
2           (3) statutory warranties;  
3           (4) building and performance standards; and  
4           (5) how the items listed in Subdivisions (1) through  
5 (4) apply to a new or newly remodeled home.

6           (c) The commission shall make the pamphlet available  
7 through the commission's Internet website and in a hard-copy  
8 format.

9           (d) An escrow officer, as defined by Section 2501.003,  
10 Insurance Code, or an attorney performing closing services in which  
11 title insurance is not obtained, at a closing in which title to a  
12 new home is transferred shall provide the pamphlet produced by the  
13 commission under Subsection (a) to the person purchasing the new  
14 home.

15           (e) The commission shall provide the pamphlet to a homeowner  
16 after registration of the home under Section 426.003(b).

17           Sec. 430.013. WARRANTIES AND PERFORMANCE STANDARDS  
18 ADVISORY COMMITTEE. (a) The commission shall appoint a Warranties  
19 and Performance Standards Advisory Committee.

20           (b) The committee may:

21                   (1) regularly review and evaluate the residential  
22 construction performance standards adopted by the commission;

23                   (2) review and evaluate proposed changes to the  
24 performance standards made either by the public or internally by  
25 the commission; and

26                   (3) make recommendations to the commission.

27           (c) The commission by rule shall establish:

- 1           (1) the number of committee members;
- 2           (2) qualifications for appointment to the committee;
- 3           (3) the terms of service of committee members; and
- 4           (4) the duties and operating procedures of the  
5 committee.

6           (d) A member of the committee serves at the will of the  
7 commission.

8           (e) A member is not entitled to compensation for service on  
9 the committee but is entitled to reimbursement for reasonable  
10 travel expenses the member incurs in performing committee duties.

11           SECTION 65. Section 446.004, Property Code, is amended to  
12 read as follows:

13           Sec. 446.004. FEE INSPECTOR. A fee inspector must be either  
14 a licensed engineer, a registered architect, a professional  
15 inspector licensed by the Texas Real Estate Commission, a plumbing  
16 inspector employed by a municipality and licensed by the Texas  
17 State Board of Plumbing Examiners, a building inspector employed by  
18 a political subdivision, or a third-party inspector qualified under  
19 Section 427.001(b). A builder may use the same or a different fee  
20 inspector for inspections required under this chapter.

21           SECTION 66. The following provisions of the Property Code  
22 are repealed:

- 23           (1) Section 401.002(12);
- 24           (2) Section 416.011;
- 25           (3) Section 416.012(b);
- 26           (4) Section 418.002(d);
- 27           (5) Section 428.001(c); and

1           (6) Subtitle E, Title 16.

2           SECTION 67. The Sunset Advisory Commission's report to the  
3 84th Legislature shall evaluate:

4           (1) the Texas Residential Construction Commission's  
5 overall performance; and

6           (2) the ability of the Texas Residential Construction  
7 Commission to implement the changes in law made by this Act and  
8 management actions recommended by the 81st Legislature.

9           SECTION 68. Promptly after this Act takes effect, the  
10 governor shall appoint the two additional members to the Texas  
11 Residential Construction Commission as required by Section  
12 406.001, Property Code, as amended by this Act. In appointing those  
13 members, the governor shall appoint one person to a term expiring  
14 February 1, 2011, and one to a term expiring February 1, 2013.

15          SECTION 69. The Texas Residential Construction Commission  
16 shall adopt rules as required by Chapter 416, Property Code, as  
17 amended by this Act, not later than December 1, 2009. A person is  
18 not required to hold a license under Section 401.005(c) or Chapter  
19 416, Property Code, as amended by this Act, until January 1, 2010.

20          SECTION 70. Not later than December 1, 2009, the Texas  
21 Residential Construction Commission shall adopt rules and  
22 prescribe forms under Sections 428.0011 and 428.006, Property Code,  
23 as added by this Act.

24          SECTION 71. Not later than December 1, 2009, the Texas  
25 Residential Construction Commission shall hire an ombudsman as  
26 provided by Chapter 428A, Property Code, as added by this Act.

27          SECTION 72. Not later than December 1, 2009, the Texas

1 Residential Construction Commission shall adopt statutory  
2 warranties and building and performance standards under Section  
3 430.001, Property Code, as amended by this Act. Except as provided  
4 by this section, the warranties and building and performance  
5 standards adopted by the commission under this section apply only  
6 to residential construction commenced on or after January 1, 2010.  
7 Residential construction commenced before January 1, 2010, or  
8 commenced on or after January 1, 2010, under a contract entered into  
9 before that date, is governed by the statutory warranties and  
10 building and performance standards applicable to the construction  
11 immediately before the adoption of the statutory warranties and  
12 building and performance standards under this section.

13 SECTION 73. (a) The terms of the current members of the  
14 Warranties and Performance Standards Advisory Committee expire on  
15 the date on which the new Warranties and Performance Standards  
16 Advisory Committee is appointed under Section 430.013, Property  
17 Code, as added by this Act.

18 (b) The changes in law made by Section 430.013, Property  
19 Code, as added by this Act, to the compensation of the members of  
20 the Warranties and Performance Standards Advisory Committee apply  
21 only to members appointed on or after the effective date of this  
22 Act.

23 SECTION 74. (a) Section 401.005, Property Code, as amended  
24 by this Act, applies only to a home, material improvement to a home,  
25 or improvement to the interior of a home, the building or remodeling  
26 of which commences on or after the effective date of this Act. A  
27 home, material improvement to a home, or improvement to the

1 interior of a home described by Section 401.005, Property Code, as  
2 amended by this Act, the building or remodeling of which is  
3 commenced before the effective date of this Act is subject to the  
4 warranty obligation applicable to the home, material improvement to  
5 the home, or improvement to the interior of the home immediately  
6 before the effective date of this Act.

7 (b) Section 401.007, Property Code, as amended by this Act,  
8 applies only to an order regarding an emergency or a violation of a  
9 statute to which Chapter 401, Property Code, applies that occurs on  
10 or after the effective date of this Act. An order regarding an  
11 emergency or a violation of a statute that occurred before the  
12 effective date of this Act is governed by the law in effect at the  
13 time the emergency or violation occurred, and that law is continued  
14 in effect for that purpose.

15 (c) Section 416.001, Property Code, as amended by this Act,  
16 applies only to an offense committed on or after the effective date  
17 of this Act. An offense committed before the effective date of this  
18 Act is governed by the law in effect at the time the offense was  
19 committed, and the former law is continued in effect for that  
20 purpose. For the purposes of this section, an offense was committed  
21 before the effective date of this Act if any element of the offense  
22 occurred before that date.

23 (d) Section 416.005, Property Code, as amended by this Act,  
24 applies only to a person licensed by the Texas Residential  
25 Construction Commission as a builder for the first time on or after  
26 January 1, 2010. A person registered with the commission as a  
27 builder before January 1, 2010, is governed by the law in effect at

1 the time the person registered, and that law is continued in effect  
2 for that purpose.

3 (e) Section 416.006(a), Property Code, as amended by this  
4 Act, applies only to a license issued for the first time on or after  
5 January 1, 2010. A certificate of registration issued before  
6 January 1, 2010, is governed by the law in effect immediately before  
7 the effective date of this Act, and that law is continued in effect  
8 for that purpose.

9 (f) Sections 416.012(c) and (e), Property Code, as amended  
10 by this Act, and the repeal by this Act of Section 416.012(b),  
11 Property Code, apply only to a renewal of a license by a builder on  
12 or after September 1, 2011. The renewal of a license by a builder  
13 before September 1, 2011, is governed by the law in effect  
14 immediately before the effective date of this Act, and that law is  
15 continued in effect for that purpose.

16 (g) Sections 418.001 and 418.002, Property Code, as amended  
17 by this Act, apply only to a ground for disciplinary action that  
18 occurs on or after the effective date of this Act. A ground for  
19 disciplinary action that occurs before the effective date of this  
20 Act is governed by the law in effect at the time the ground for  
21 disciplinary action occurred, and that law is continued in effect  
22 for that purpose.

23 (h) Section 426.003, Property Code, as amended by this Act,  
24 applies only to a registration of a home that occurs on or after the  
25 effective date of this Act. A registration of a home that occurs  
26 before the effective date of this Act is governed by the law in  
27 effect immediately before the effective date of this Act, and that

1 law is continued in effect for that purpose.

2 (i) Sections 426.004, 426.005, 428.003, and 428.004,  
3 Property Code, as amended by this Act, apply only to a request for a  
4 state inspection filed on or after the effective date of this Act.  
5 A request filed before the effective date of this Act is governed by  
6 the law in effect immediately before the effective date of this Act,  
7 and that law is continued in effect for that purpose.

8 (j) Section 27.004(1), Property Code, as amended by this  
9 Act, and Section 428.0041(a), Property Code, as added by this Act,  
10 apply only to inspection of a repair completed by a builder on or  
11 after the effective date of this Act. Inspection of a repair  
12 completed by a builder before the effective date of this Act is  
13 governed by the law in effect immediately before the effective date  
14 of this Act, and that law is continued in effect for that purpose.

15 (k) The repeal by this Act of Section 436.003, Property  
16 Code, applies only to an arbitration initiated on or after the  
17 effective date of this Act. An arbitration initiated before the  
18 effective date of this Act is governed by the law applicable to the  
19 arbitration immediately before the effective date of this Act, and  
20 that law is continued in effect for that purpose.

21 (l) The repeal by this Act of Chapter 437, Property Code,  
22 applies only to an arbitration award filed on or after the effective  
23 date of this Act. An award filed before the effective date of this  
24 Act is governed by the law in effect immediately before that date,  
25 and that law is continued in effect for that purpose.

26 (m) The repeal by this Act of Chapter 438, Property Code,  
27 applies only to an arbitration award issued on or after the

1 effective date of this Act. An award issued before the effective  
2 date of this Act is governed by the law in effect immediately before  
3 that date, and that law is continued in effect for that purpose.

4 SECTION 75. This Act takes effect September 1, 2009.